

Testimony in Favor of

H.B 5877 – An Act Concerning the Set-Aside Program For Minority Business Enterprises and Establishing A Supplier Diversity Council

Monday, March 7, 2011

Good morning members of the GAE Committee. My name is Rufus Wells, I am the Executive Director of the Minority Construction Council located at 20 Sargeant St. in Hartford. I am here today in support of H.B. 5877.

This Bill is important to the minority construction community because there is clearly a disparity between the number available minority contractors who are Ready, Willing and Able to do business with the State of Connecticut, and their utilization by State agencies.

A Disparity Study will show that there is not only an inference of discrimination within State agencies directed towards minority contractors and minority-owned businesses, but that the State's procurement process creates institutional racism and violates the Sherman Anti-Trust Act because it thwarts competition, restrains the free flow of trade, and results in higher prices to the State.

There is not a level playing field when it comes to minority contractors doing business with the State. In the construction industry an MBE contractor must first be certified with the Department of Administrative Services (DAS) as a minority-owned and operated firm. Next, the MBE contractor must be pre-qualified by DAS if the contract is in excess of \$500,000. If this same contractor desires to work on a construction project at the University of Connecticut, Uconn has their own pre-qualification of contractors. If that isn't enough, some of the prime contractors hired by Uconn then have their own pre-qualification of contractors that desire to work for these primes.

The pre-qualification began in 2004 with the passage of Substitute H.B. 5433 "An Act Revising prequalification Requirements for State Construction Contracts". Prior to 2004 prime contracts were issued to MBE contractors in excess of \$6,500,000 for some masonry contractors and contracts of \$2-3 million dollars were not uncommon. After H.B. 5433 made it impossible for minority contractors to grow their businesses beyond the capacity of \$500,000 on any one project because State law mandated this artificial threshold. This is an example of an unintended consequence that limits the growth and development of MBE contractors.

If we turn our attention to the Disparity Study, I have found that not many people really understand what a Disparity Study is. A Disparity Study is a qualitative and quantitative analysis of an entity's procurement processes to establish a factual predicate of discrimination. What

this means is "it is a self portrait of the State of Connecticut to determine if the State discriminates in its contracting process. The State is said to discriminate if there is a significant difference/disparity in the number of MBE firms in the relevant marketplace Ready, Willing and Able to do business with the State, and the actual number of State contract awards within a contracting category. Many times the discrimination encountered is not caused by the contracting officer, but by the system the contracting officer is forced to use. Discrimination has been designed into the system so that the system itself, eliminates minority contractors from consideration for contracts by pre-qualifying, the pool of MBEs, then pre-qualing those that have been previously pre-qualified, and then prequaling them again until the pool is too small to allow competitive bidding or set-aside.

A Disparity Study will not end discrimination in State contracting. The Study will identify that discrimination exists and establish the factual predicate necessary to narrowly tailor a program to overcome the effects of discrimination. The Disparity Study is the FIRST step in leveling the playing field. The State must then accept the fact that discrimination exists. The MDC took the time, and effort to order a Disparity Study. At mid-stream when they did not like the manner in which the inference of discrimination was unfolding, they expanded the scope of the Study to include the current operating year and sprinted to include new minority contracts outside of the initial scope of the Study. With MDC's "new" minority contracts added to the initial Study, they then denied the discrimination results identified in the Study's final results.

Personally, MCC supports a Disparity Study, but we would also like to see the programs that are recommended as a result of the Study be implemented, compliance monitored and funded put in place in support of the recommended programs.

The Disparity Study will dictate separate goals through narrow tailoring of set-asides, but in the meantime the State can take the initiative to set-aside five percent of all State contracts and not require pre-qual (bonding, certified financials etc.) which were not required prior to 2004 and adds \$4,000 and up, just to be in a position to do business with the State with no guarantee of getting a contract.

Finally, training of state employees and officials is part and parcel of any implementation strategy so MCC supports this as well as the establishment of a Statewide Supplier Diversity Council reporting to the Governor. I would also hope that MCC was part of such a panel and that the panel would be empowered to oversee implementation of the Disparity findings.

Thank you for your time and attention and I would be pleased to address any questions you may have.